

IN THE UNITED STATES DISTRICT COURT
FOR THE EASTERN DISTRICT OF CALIFORNIA

GREGG MICHAEL REITAN,

Petitioner,

No. CIV S-04-2746 FCD GGH P

vs.

D. RUNNELS, et al.,

Respondents.

ORDER AND

FINDINGS AND RECOMMENDATIONS

_____/

Petitioner is a state prisoner proceeding pro se with a petition for writ of habeas corpus pursuant to 28 U.S.C. § 2254. On February 9, 2005, the court recommended that this action be dismissed for petitioner's failure to exhaust state court remedies. On March 25, 2005, the court granted petitioner a thirty day extension of time to file objections.

On April 4, 2005, petitioner filed an amended petition containing proof of exhaustion. Good cause appearing, the February 9, 2005, findings and recommendations are vacated.

In this action, petitioner seeks relief pursuant to Blakely v. Washington, 124 S.Ct. 2531 (2004). Petitioner was convicted in 1995. According to the amended petition, the California Court of Appeal denied his direct appeal on January 27, 1997. Although petitioner has not identified the date the California Supreme Court denied his petition for review, it is fair to

1 assume that it was several years ago. Because the Supreme Court has not made Blakely
2 retroactive to cases on collateral review, no relief is available to petitioner on that basis. Cook v.
3 United States, 386 F.3d 949, 950 (9th Cir. 2004)(order).

4 Accordingly, IT IS HEREBY ORDERED that the February 9, 2005, findings and
5 recommendations are vacated; and

6 IT IS HEREBY RECOMMENDED that this action be dismissed.

7 These findings and recommendations are submitted to the United States District
8 Judge assigned to the case, pursuant to the provisions of 28 U.S.C. § 636(b)(1). Within twenty
9 days after being served with these findings and recommendations, petitioner may file written
10 objections with the court. The document should be captioned "Objections to Magistrate Judge's
11 Findings and Recommendations." Petitioner is advised that failure to file objections within the
12 specified time may waive the right to appeal the District Court's order. Martinez v. Ylst, 951
13 F.2d 1153 (9th Cir. 1991).

14 DATED: 4/18/05

15 /s/ Gregory G. Hollows

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17 GREGORY G. HOLLOWS
UNITED STATES MAGISTRATE JUDGE

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